IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 18, 2008

STATE OF TENNESSEE v. AMBER LEE STIDHAM a.k.a. AMBER LEE STIDAM

Direct Appeal from the Criminal Court for Putnam County
No. 06-0682 Leon C. Burns, Jr., Judge

No. M2007-01757-CCA-R3-CD - Filed December 30, 2008

The appellant, Amber Lee Stidham,[1] was found guilty by a jury in the Putnam County Criminal Court of driving under the influence, second offense. The trial court imposed a sentence of eleven months and twenty-nine days with fifty-five days to be served in confinement. On appeal, the appellant argues that the trial court erred in denying her motion to suppress her statement to police. Upon our review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

John Philip Parsons, Cookeville, Tennessee, for the appellant, Amber Lee Stidham.

Robert E. Cooper, Jr., Attorney General and Reporter; Clarence E. Lutz, Assistant Attorney General; Anthony J. Craighead, Interim District Attorney General; and Marty S. Savage, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

At trial, Angela Pedigo, a resident of Red Boiling Springs, testified that on June 2, 2006, she was in Cookeville on business. Shortly before 7:30 p.m., Pedigo was driving on a street in front of a Chevrolet dealership when she noticed a vehicle pull in behind her truck. The vehicle was weaving and was too close to the back of her truck. Pedigo increased her speed to avoid being struck from behind. Pedigo could see only one person in the vehicle, but she was unable to tell the gender of that

---

[1] At trial, the appellant testified that the correct spelling of her last name is "Stidam." We will utilize the spelling contained in the indictment.

person. As Pedigo watched, the vehicle veered too far to the right and struck a utility pole, tearing the mirror off of the side of the vehicle. The vehicle did not stop after the accident, so Pedigo called 911. Pedigo stopped at a red light, and the vehicle, which was behind her, also stopped. After the light turned green, Pedigo turned right and the vehicle behind her proceeded through the intersection then pulled into the parking lot of a Burger King restaurant. Pedigo, who was still on the telephone with a police dispatcher, drove into a nearby Sav-A-Lot parking lot to watch the vehicle.

The dispatcher asked Pedigo if she could get close enough to the vehicle to obtain a license plate number. Pedigo drove to the Burger King parking lot and saw the driver, who had gotten out of the vehicle, "just kind of staggering around the back end." The driver got back into the vehicle, backed out of the parking space, drove to the Sav-A-Lot parking lot, and parked the vehicle. Pedigo followed and parked her truck so that she could observe the driver.

When police arrived at the scene, Pedigo spoke with the officer and identified the vehicle that had concerned her. After giving a statement to police, she left.

Cookeville Police Officer Robert Cantwell testified that on June 2, 2006, he was dispatched to the Sav-A-Lot parking lot to investigate a report of an impaired driver. When he arrived at the scene, Officer Cantwell first spoke with Pedigo. She identified a white Grand Prix in the Sav-A-Lot parking lot as the vehicle she had reported. Pedigo told Officer Cantwell that when she was driving in front of Carlin Motors, she saw the white Grand Prix veer to the right and strike a utility pole.

Officer Cantwell approached the Grand Prix and saw moderate damage to the front passenger side of the vehicle. Specifically, he noticed that the side mirror was missing and that there were scratches "from where she had struck the utility pole." Officer Cantwell went to the driver's side of the vehicle and saw the appellant, who was alone in the vehicle, in the driver's seat. Officer Cantwell also saw that the keys were in the ignition of the vehicle. Officer Cantwell asked the appellant if she realized that she had hit a utility pole. The appellant said that she had fallen asleep and had run off the road. Officer Cantwell said that the appellant appeared to be impaired. He observed that her eyes were "glazed, red, watery, and she just was kind of stammering, stammering back and forth in her speech." The appellant did not appear to be alert, and Officer Cantwell suspected that she was under the influence of an intoxicant.

Officer Cantwell testified that he then asked the appellant to step out of the vehicle and perform field sobriety tests. Before starting the tests, Officer Cantwell asked the appellant if she had any medical problems that would prevent her from performing the field sobriety tests. The appellant said that she did not have any problems. Officer Cantwell also asked the appellant whether her shoes were comfortable or if she wanted to remove them before starting the tests.

Officer Cantwell first asked the appellant to perform the alphabet test, reciting the alphabet starting with the letter "c" and ending with the letter "x." Officer Cantwell demonstrated the test for the appellant then asked her to perform the test. The appellant began the test correctly but did not

end with "x," instead finishing with the letter "z." Officer Cantwell said that the appellant failed the alphabet test.

The second test Officer Cantwell asked the appellant to perform was the one-leg stand. Officer Cantwell instructed the appellant that she was to stand straight with her hands at her sides while she lifted either her right or left foot approximately six inches off of the ground. He also demonstrated the test for the appellant. With her foot raised, she was to count out loud for thirty seconds or until Officer Cantwell told her to stop. Officer Cantwell testified that the appellant failed the test by using her arms for balance and by putting her foot down twice during the test.

The final test Officer Cantwell asked the appellant to perform was the nine-step walk and turn test. Officer Cantwell demonstrated the test, showing the appellant that she was to take nine steps, heel to toe, in a straight line. On the ninth step, the appellant was to make a small turn and return nine steps to the beginning. Officer Cantwell stated that the appellant failed this test by taking ten steps forward, making an improper turn, and taking ten steps back. Officer Cantwell said that the appellant's "concentration was definitely off" during the field sobriety tests.

After the appellant's failure to successfully complete any of the field sobriety tests, Officer Cantwell asked the appellant if she had taken any medication. The appellant responded that "she had smoked a joint, taken Hydrocodone, and a Xanax earlier." The officer said that "after observing her, after the three field sobriety tests, and after speaking with her and her telling . . . that she had smoked a joint and had taken Hydrocodone and Xanax earlier," he determined that the appellant was too impaired to drive. Based upon this determination, Officer Cantwell placed the appellant under arrest for driving under the influence (DUI). Officer Cantwell read the appellant an implied consent form and asked her to submit to a blood test. The appellant would not give a definitive answer to his request. Officer Cantwell said that he could have requested the appellant submit to either a breath test or a blood test. Officer Cantwell explained that a breath test gauged the amount of alcohol in a person's system but would not gauge whether a person was under the influence of drugs. Officer Cantwell said that only a blood test would determine whether a person was under the influence of a drug. Because Officer Cantwell thought that the appellant was under the influence of a drug or narcotic, he believed that a blood test should be conducted.

Cookeville Police Officer Anthony Leonard testified that at approximately 7:30 p.m. on June 2, 2006, he responded to the Sav-A-Lot parking lot after hearing on a police radio that a white vehicle had hit a utility pole and that the driver might be intoxicated. When Officer Leonard arrived at the parking lot, a white vehicle matching the description given by dispatch was pulling into the parking lot from Burger King. Officer Leonard parked his vehicle at an angle behind the white vehicle. He then got out of his vehicle and approached the driver's side of the white vehicle.

The appellant was the only person in the vehicle. Officer Leonard said that the appellant seemed confused and unsure with a "slowed alertness" but that he did not smell alcohol. When Officer Cantwell asked the appellant to step from her vehicle, she was unsteady on her feet. The

appellant's failure to correctly perform the field sobriety tests led Officer Leonard to believe that she was under the influence of "some type of intoxicant, whether it be alcohol or drugs."

The appellant testified that she would soon be thirty years old, had three children, and was recently divorced. On June 2, 2006, she and her ex-husband had argued "all day" regarding the custody and support of their children. She drove the children from her residence at Saxony Apartments to her ex-husband's residence off County Farm Road. She said she remembered stopping for a red light while driving home, but she did not recall swerving or following anyone too closely. However, she acknowledged hitting a utility pole, maintaining that "it was kind of like suddenly I woke up. I felt like I had been asleep or something." She said that she was "shocked" when she hit the pole.

The appellant said that she pulled over at the first opportunity and telephoned a friend to come pick her up because she did not intend to drive home in her condition. She was making the call when an officer approached her vehicle and told her to get off the telephone. The appellant remembered telling the officers that she had fallen asleep while driving. She also told the officers that she had smoked a joint and had taken a hydrocodone and a Xanax "earlier."

At trial, the appellant said that she had smoked a joint on June 1, 2006, the day before the traffic stop. Additionally, she said that she had recently cut her hand and was given a prescription for hydrocodone to relieve the pain. The appellant maintained that she took only one hydrocodone pill every four to six hours as prescribed. She said that on the day of the traffic stop, her girlfriend had given her a "nerve pill" which her friend said was Xanax. The appellant said she took the pill to calm her nerves after arguing with her ex-husband, and she was unaware of the effect of the drugs.

Based upon the foregoing, the jury found the appellant guilty of driving under the influence (DUI). On appeal, the appellant challenges the trial court's ruling on her motion to suppress the statements she made to police after she had performed the field sobriety tests.

II. Analysis

The appellant's argument on appeal is that her statements to Officer Cantwell regarding her use of prescription drugs and marijuana were made during a custodial interrogation without the benefit of Miranda warnings. Therefore, she argues, her statement should have been suppressed.

In reviewing a trial court's determinations regarding a suppression hearing, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Thus, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." Id. Nevertheless, appellate courts will review the trial court's application of law to the facts purely de novo. See State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001). Furthermore, the State, as the prevailing party, is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences

that may be drawn from that evidence." Odom, 928 S.W.2d at 23. Moreover, we note that "in evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." State v. Henning, 975 S.W.2d 290, 299 (Tenn. 1998).

In Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966), the United States Supreme Court held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." These procedural safeguards require that police officers must advise a defendant of his or her right to remain silent and of his or her right to counsel before they may initiate custodial interrogation. State v. Sawyer, 156 S.W.3d 531, 533 (Tenn. 2005). "Custodial" means that the subject of questioning is in "custody or otherwise deprived of his freedom by the authorities in any significant way." Miranda, 384 U.S. at 478, 86 S. Ct. at 1630.

However, the United States Supreme Court has held that a person detained temporarily for a traffic stop, even one investigating intoxication, is not "in custody" for the purposes of Miranda. Berkemer v. McCarty, 468 U.S. 420, 442, 104 S. Ct. 3138, 3151-52 (1984); see also State v. Snapp, 696 S.W.2d 370, 371 (Tenn. Crim. App. 1985). In McCarty, the Court "did not view the degree of coercion associated with being in police custody with which Miranda was concerned to arise in ordinary traffic stops." State v. Roger Odell Godfrey, No. 03C01-9402-CR-00076, 1995 WL 120464, at **2-3 (Tenn. Crim. App. at Knoxville, Mar. 20, 1995) (citing McCarty, 468 U.S. at 440, 104 S. Ct. at 3150). Instead, Miranda protections only become necessary if motorist who was detained in a traffic stop were subjected to treatment rendering him "in custody" for practical purposes. Id. The question of whether a person is "in custody" for Miranda purposes is objective and does not depend upon the officer's subjective intention or the suspect's subjective perception. State v. Crutcher, 989 S.W.2d 295, 304 (Tenn. 1999). "The subjective intent of the officer is relevant to the assessment only to the extent that the officer's intent has been conveyed to the person confronted." Id.

In the instant case, Officer Cantwell's testimony at the suppression hearing revealed that he responded to a Sav-A-Lot parking lot after receiving a report of a possibly intoxicated driver. Pedigo identified the appellant's vehicle as the one that caused her concern. Officer Cantwell testified that he approached the vehicle and asked the appellant to perform field sobriety tests, which she failed. Officer Cantwell testified that after the appellant failed the tests, he asked the appellant if she had taken any medication. Officer Cantwell testified that the appellant responded that she had smoked a joint and had taken a hydrocodone and "a Xanax."

We note that the video recording of the traffic stop reflects that prior to the field sobriety tests, Officer Cantwell asked the appellant if anything was wrong with her legs or if she was under a doctor's care for anything that would affect her performance on the field sobriety tests. The appellant said no. The officer then asked if she had any trouble with the alphabet, to which the appellant responded that she would not have any trouble. Then, the appellant volunteered that she

was on pain medicine for her hand. Officer Cantwell then asked the appellant, "Are you taking any pain medicine right now?" The appellant replied no but said that she had taken "a Xanax" about an hour prior. The video reveals that after the appellant disclosed this information, Officer Cantwell began conducting the field sobriety tests. The video demonstrates that after the field sobriety tests, Officer Cantwell asked the appellant if she had taken any drugs or medication, and she disclosed that she had smoked a joint earlier and had taken a hydrocodone.

As we stated earlier, the appellant contends that Officer Cantwell intended to arrest her after she failed her field sobriety tests; therefore, she contends, that after she failed the tests the officer should have immediately Mirandized her prior to asking additional questions regarding her drug use. However, as we noted earlier, "persons temporarily detained pursuant to a traffic stop, even one that may involve some investigation regarding intoxication, are not 'in custody' for the purposes of Miranda." Godfrey, No. 03C01-9402-CR-00076, 1995 WL 120464, at *2. Therefore, "asking a modest number of questions and requesting the performance of field sobriety tests at a location visible to passing motorists do not, by themselves, constitute treatment that can fairly be characterized as the functional equivalent of a formal arrest." Godfrey, No. 03C01-9402-CR-00076, 1995 WL 120464, at *3 (citing McCarty, 468 U.S. at 442, 104 S. Ct. at 3151); see also Snapp, 696 S.W.2d at 371; State v. John Lee Dockery, No. E2000-00753-CCA-R3-CD, 2000 WL 1839132, at *2 (Tenn. Crim. App. at Knoxville, Dec. 14, 2000). Thus, Officer Cantwell did not violate Miranda when, during the traffic stop, he asked the appellant questions relating to the traffic stop. Moreover, the video demonstrates that the appellant was not "under arrest," even by her own argument, at the time she first disclosed that she had taken Xanax.

Further, Officer Cantwell stated that after the appellant failed the field sobriety tests, he did not intend to let her drive her vehicle again. However, he did not formally arrest her until after the completion of the field sobriety tests when she revealed that she had smoked a joint and taken medication. This court has previously stated that "an officer's personal belief that a suspect is subject to arrest is irrelevant to the custody issue if the belief is not communicated or otherwise manifested to the suspect being questioned." Godfrey, No. 03C01-9402-CR-00076, 1995 WL 120464, at *3 (citing McCarty, 468 U.S. at 442, 104 S. Ct. at 3151). Our review of the record reveals that there was no indication that the appellant was under arrest until she failed the field sobriety tests and acknowledged that she had taken drugs. Therefore, we conclude that the appellant was not "in custody" for Miranda purposes at the time she told Officer Cantwell that she had smoked a joint and had taken hydrocodone and Xanax. See State v. David Lane Goss, No. M2006-01467-CCA-R3-CD, 2007 WL 2200284, at *4 (Tenn. Crim. App. at Nashville, July 31, 2007), perm. to appeal denied, (Tenn. 2008). Accordingly, the trial court did not err in denying the appellant's motion to suppress.

III. Conclusion

Finding no error, we affirm the judgment of the trial court.

NORMA McGEE OGLE, JUDGE